

The Telecommunications Excise Tax is imposed on the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. See, generally, 86 Ill. Adm. Code 495. (This is a GIL.)

February 8, 2002

Dear Xxxxx:

This letter is in response to your letter dated May 3, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding upon the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found on the Department's website at <http://www.revenue.state.il.us/Laws/regs/part1200/>. We regret our delay in responding. The issues about which you have inquired (the proper taxation of teleconferencing services), however, are the subject of ongoing Department consideration. We hope that our response is helpful.

In your letter you have stated and made inquiry as follows:

Pursuant to Illinois Administrative Code tit. 2, § 1200.120, we respectfully request issuance of a General Information Letter on behalf of our client (the 'Company'). Please note that the Company is not currently under audit by the Illinois Department of Revenue (the 'Department'), nor is the entity currently involved in litigation with the Department.

Facts

The Company is a telecommunications services provider headquartered in a state outside of Illinois. The company maintains offices and equipment in this state as well as another state (not Illinois) and one international location.

Services - Generally

The fundamental capabilities of the Company's primary services are to provide conference call bridging services to clients. The services provided include: (1) call reservation, (2) national and international outbound access, (3) national inbound access, and (4) prearranged conference connection. Charges are billed monthly based on rate information. There may be a set-up rate per participant, as well as a per minute charge. Billing will be discussed in greater detail *infra*.

At this point it should be noted that the following terms have meanings specific to the Company:

- (1) *Customer.* The individual or entity to whom the invoice is sent. The customer may select various features on behalf of the call leader, who is often an employee of the customer. However, the customer ultimately bears responsibility for payment to the Company.
- (2) *Call leader.* The call leader is the individual who manages the call. Note that the customer and call leader may or may not be the same individual.
- (3) *Call participants or callers.* The individuals who call into and participate in the conference.
- (4) *Operator.* The Company employee who assists the customer in reserving the call, assists the call leader in managing the call, and connects the various call participants to the call. The operator may also manage the various features (except for word processing). These features will be discussed in greater detail *infra*.

The Company provides the audio conferencing services through the use of audio teleconferencing equipment referred to as an audio bridge. An audio bridge is a computer that facilitates interactive communication by joining multiple telephone parties at a single connection point. Conference participants are joined together by an operator using one of the Company's audio bridges. The Company operates 67 bridges, which are located in the three jurisdictions discussed *supra*.

Services - Description

The Company offers customers two basic types of conference call services: Operator assisted calls and Automated calls.

- (1) **Operator assisted calls.** Operator-assisted conference call services account for approximately 85-90% of the Company's revenue. Although operator-assisted services are provided using three methods, each are similar in that an operator coordinates the conference call.
 - (1)(a) **Operator assisted calls with dial-in toll-free '800' access.** Participants call the Company at a pre-arranged time using a toll-free '800' number that the Company provides. A conference administrator then connects the participants to one another through a Company audio bridge. The process of operator-assisted calls that are placed in this manner is as follows. Participants calling the '800' number access their own local exchange carrier ('LEC'). The LEC connects the participants to the Company's interexchange carrier ('IXC'), which in turn connects them to the LEC serving the location of the Company's audio bridge. This LEC then connects the participants to Company's audio bridge. Consequently, the Company incurs the telephone usage cost for the duration of the call. This type of conference calling service represents a substantial majority of the Company's operator-assisted services.
 - (1)(b) **Operator assisted calls without dial-in toll-free '800' access.** In a second method of providing operator-assisted services, participants call the Company's operator at a prearranged time without the use of an '800' number and are then joined together through the audio bridge. Participants using the service in this

manner use their own telephone equipment to access their own LEC, which in turn connects participants to their own IXC, which then connects them to the LEC serving the Company's audio bridge. The Company's LEC then connects the participants to the audio bridge. In this form of operator-assisted conference calling, participants incur their own telephone usage throughout the call.

- (1)(c) **Operator assisted calls with dial-out service.** The third method of providing operator-assisted services is the 'dial-out' service method. Conference administrators call participants at a pre-arranged time and link them to one another through an audio bridge. With this type of conference call, the Company accesses the LEC serving its location, which connects it to its designated IXC, which in turn connects the Company to the LECs serving the participants. The participants' LECs then connect the Company to the participants' phones. The Company incurs the telephone usage cost for the call's duration.
- (2) **Automated calls.** The second type of conference call service that the Company provides is the automated conference call service. For this service, an operator does not assist the participants in connecting to the audio bridge. Rather, the call leader reserves an '800' number with the Company and receives a pass code. The participants dial the reserved '800' number, enter the pass code, and are connected to the audio bridge. Participants calling the '800' number access their own LEC. The LEC connects the participants to the Company's IXC, which in turn connects them to the LEC serving the location of the Company's audio bridge. This LEC then connects the participants to Company's audio bridge. Consequently, the Company incurs the telephone usage cost for the duration of the call. This second service type accounts for approximately 10-15% of the Company's revenue.

Features

The Company offers its customers a variety of optional features in connection with its services. All features are performed by operators at the Company's locations. The Company charges a fee for each service unless otherwise noted. Features are separately stated on company invoices unless otherwise noted.

- (1) **Operator-assisted features.** These features may be generally described as professional services. Examples of this type of feature include:
- Call confirmation, where a Company operator faxes the customer a confirmation of the call reservation (this service is often performed);
 - Call registration, where a Company operator welcomes a participant to the call, taking such personal information as required by the customer, and then introduces the participant to the call;
 - Call participation, where a Company operator faxes the customer a list of participants and related data (e.g., time of call-in, time of departure) immediately after the call ends;
 - Call reminders, where a Company operator faxes or calls the various call participants to remind them of an upcoming call;
 - Diskette billing, where a Company operator sends a detailed billing statement both in hardcopy and on diskette; and/ or

- Conference call no-show, which is a charge imposed upon the customer if less than 80% of the scheduled call participants are available for the call.

(2) Digital recording and playback. Should the customer so desire the Company will digitally record the entirety of the conference call.

- Digital playback, allowing new callers to hear all or portions of a previous call via a prearranged access or identification number (this feature has a minimum per day charge);
- Digital response, allowing new callers to hear all or a portion of a previously recorded call via a prearranged access or identification number and then to respond via either voice or numeric responses to prearranged questions, whereupon the Company then compiles the data in survey form in either a word processing or spreadsheet format and returns it to the customer digitally;
- Digital presentation, where the customer loads a multi-media presentation on the Company web-site for remote access by conference call participants during the call; and/or
- Digital transcript, where the Company provides the customer with a transcript of the conversation in digital form.

(3) Property. Certain Company features involve the delivery of tangible personal property to the customer and/ or other designated persons. Essentially the personal property is limited to the following:

- An audiotape of the call;
- A hardcopy of the transcript of the call as described above; and/ or
- A hardcopy of information gathered through the digital response feature described above.

(4) Shipping. The Company makes no charge for shipping when shipment is made via standard United States Postal Service First Class mail. However, the Company does charge and separately state the following:

- Shipping of analog tape(s);
- Overnight or express mail parcel delivery.

Billing

All of the above services and features are billed to the customer. The invoice is not necessarily sent to the call leader. For example, a business organization may have an account and several persons in the organization may act as call leaders. The bill would be sent to the organization and would be itemized by call leader. The customer and the call leader are generally in the same location. The Company typically bills the customer on a monthly basis.

The Company determines its service charges in the following manner. First, there is sometimes a set-up charge that is based upon the number of call participants. For example, if a call involves four participants and the charge for each is \$3.00, the total set-up charge is \$12.00. Second, the company bills its customers a per minute charge

that is based upon the number of call participants. Thus, for a \$1.00/minute call that involves four participants, the total per minute charge equals \$4.00.

Features for which the Company charges are separately stated on its customer invoices.

State and Local Taxes

It should be noted that the Company pays all state and local taxes as charged to it by any IXC's and LEC's.

Issues

We respectfully request the Department's opinion on the following issues. We have set forth our interpretation of applicable law as well as our conclusions.

Note that for purposes of this request for General Information Letter it is assumed that the customer (and thus the billing address) and the call leader are located in Illinois. Consequently the call will satisfy the 'two out of three' rule as described in *Goldberg v. Sweet* if the Company's conferencing services are deemed to be telecommunications services according to the definition of telecommunications services contained in 35 ILL. COMP. STAT. 630/3.

- (1) Are the Company's conferencing services subject to the telecommunications tax imposed by 35 ILL. COMP. STAT. 630/1 *et. seq.*?
- (2) Are the Company's conferencing services subject to the Illinois Retailer's Occupation Tax imposed by 35 IL. COMP. STAT. 120/1 *et. seq.*?
- (3) Are the Company's sales of various optional features subject to the telecommunications tax imposed by 35 ILL. COMP. STAT. 630/1 *et. seq.*?
- (4) Are the Company's sales of various optional features subject to the Illinois Retailer's Occupation Tax imposed by 35 IL. COMP. STAT. 120/1 *et. seq.*?

Conclusions

- (1) No, the Company's conferencing services are not subject to the telecommunications tax imposed by 35 ILL. COMP. STAT. 630/1 *et. seq.* as the services provided by the Company do not fit the definition of telecommunications services.
- (2) No, the Company's conferencing services are not subject to the Illinois Retailer's Occupation Tax imposed by 35 IL. COMP. STAT. 120/1 *et. seq.*
- (3) No, the Company's sales of various features are not subject to the telecommunications tax imposed by 35 ILL. COMP. STAT. 630/1 *et. seq.* as the services provided by the Company do not fit the definition of telecommunications services.
- (4) No, the Company's sales of various features are not subject to the Illinois Retailer's Occupation Tax imposed by 35 IL. COMP. STAT. 120/1 *et. seq.*

Discussion and Applicable Law

Overview

Illinois imposes a telecommunications excise tax upon the act or privilege of originating or receiving intrastate or interstate telecommunications in the State. 35 ILL. COMP. STAT. 630/3. The term 'telecommunications' includes, but is not limited to, 'messages or information transmitted through the use of local, toll, and wide area telephone service; private line services; channel services; telegraph services; teletypewriter; computer exchange services...or any other transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiberoptics...or similar facilities.' 35 ILL. COMP. STAT. 630/(2)(c). Intrastate telecommunications are all those communications that originate and terminate within Illinois, while interstate telecommunications are those that either originate or terminate outside the state. *Id.* at (d), (e). The tax may be imposed on interstate telecommunications if the communication originates or terminates in Illinois and is charged to an Illinois service address. *Goldberg v. Sweet*, 488 U.S. 352 (1989). The service address is the location of the telecommunications equipment where the services originate or are received. 35 ILL. COMP. STAT. 630/2(n). The state allows a credit for similar taxes paid on such services in other states. See *Goldberg v. Sweet*, 488 U.S. 352 (1989).

Sales of tangible personal property in Illinois are subject to the retailers' occupation tax, which is similar to sales tax. 35 ILL. COMP. STAT. 120/2. In general, services in Illinois are not subject to that tax. In addition, charges for shipping services are explicitly exempt from sales tax provided the seller and the buyer contract separately for such shipping charges by not including such charges in the selling price of the tangible personal property. Ill. Admin. Code § 130.415. Special rules apply to sales of services involving the transfer of tangible personal property. Any person in Illinois transferring tangible personal property as an incident to a sale of services is defined as a 'serviceman.' Ill. Admin. Code § 140.120. If the amount of property that the serviceman delivers is de minimus, or less than 35% of the value of the transaction, then the serviceman should remit retailers' occupation tax on the property purchased. Ill. Admin. Code § 140.101(f). If the value of the property is greater than that, however, the serviceman is subject to the Illinois service occupation tax. *Id.* That tax is imposed in a variety of ways upon the serviceman's purchases of property transferred and/or sales of services. *Id.* at (e)-(h).

Issue #1: Are the Company's conferencing services subject to the telecommunications tax imposed by 35 ILL. COMP. STAT. 630/I et. seq.?

'Telecommunications' is defined by the statute to mean 'messages or information transmitted through the use of local, toll, and wide area telephone service; private line services; channel services; telegraph services; teletypewriter; computer exchange services...or any other transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiberoptics...or similar facilities.' 35 ILL. COMP. STAT. 630/(2)(c). However, 'telecommunications' is *not* defined to include the connection of customers to a common platform or audio bridge, thereby providing a high-quality communications platform for a substantial number of users. As previously noted, the Company's primary objective is to provide a bridging service and not any of the telecommunications services as defined above. The Company is, in fact, a *consumer* of these services as it purchases such services from its LECs and IXC's and pays applicable telecommunications taxes. The Company transmits no messages or

information as part of its conference call services, rather, it purchases such services. It is our position that the Company is therefore not a telecommunications service provider as defined by Illinois authority.

Furthermore, note that the Company and/or its customers remit any tax that may be imposed on telecommunications services pursuant to Illinois law. For example, when a participant calls the '800' number, the participant accesses its own LEC. The participant is responsible for any tax imposed in such services. The participant is then connected to the Company's IXC, which in turn connects the participant to the LEC serving the location of the Company's audio bridge. The Company incurs the phone usage cost from the point the participant accesses the Company's IXC forward. The Company remits tax to its IXC and LEC for this phone usage. It is our contention that the Company is not responsible for subsequently charging tax to participants for the local exchange services upon which the Company has already remitted tax. Thus, the Company should not be considered a reseller of local exchange services, but rather a consumer of those services.

Additionally, the definition of telecommunications does not include 'value added services in which computer processing applications are used to act on the form, content, code and protocol of the information for purposes other than transmission.' 35 Ill. Comp. Stat. 630/2(c). The connection of a number of customers via a computerized bridge falls under the 'value added services' held to be non-taxable. The bridge is a computer that facilitates interactive communication by joining callers at a single connection point. The audio bridge acts on the form of the voice (equivalent to information) by adjusting the volume and otherwise facilitating the conference call. This is a value added service, though it is not a value added telecommunications service as the bridge serves a purpose other than transmission.

We are aware the Department of Revenue ('the Department'), through a General Information Letter, has previously addressed the issue conference calling services provided via a computerized bridge. See Ill. Gen. Inf. Ltr. 95-0304 (July 14, 1995). In this letter the Department examined the taxability of conference call sales that a Texas vendor provided Illinois customers via the vendor's Florida switch. The Department held that conference call charges are taxable as services necessary for, or directly related to, the retailer's provision of telecommunications. However, the entity therein claimed to be a value-added reseller of telecommunications services and thus invoiced its customers for the line costs it incurred. These line costs were considered to constitute telecommunications services provided by the entity even though the line services were technically provided by the LECs and IXCs. Accordingly, the entity was considered a telecommunications service provider. However, in the instant matter, the Company does not purport to be a value-added reseller of telecommunications services. In fact, as was previously discussed, the Company considers itself to be a consumer of telecommunications services and thus does not provide the LECs and IXCs from which it purchases line time with Certificates of Resale as was advised in Ill. Gen. Inf. Ltr. 95-0304.

Historically Illinois has taken the position that conference call services provided in conjunction with telecommunications services are 'necessary for' or 'directly related' to the telecommunications service, and, as such, are subject to tax. A vendor is considered to be providing telecommunications services if the communications originate or terminate in-state and are billed to an Illinois service address, which is the location of the telecommunications equipment at which the services originate or are received. In

general we agree with this position. However, based on the facts presented the Company should be considered a consumer of telecommunications services and a provider of audio bridging services. These audio bridging services should be considered apart from the telecommunications services consumed by the Company. Thus, the Department's contention that conference call services are 'necessary for' or 'directly related' to telecommunications service does not apply to the Company herein.

Issue #2: Are the Company's conferencing services subject to the Illinois Retailer's Occupation Tax imposed by 35 IL. COMP. STAT. 120/I et. seq.?

Services in Illinois are generally exempt from sales (or 'occupation') tax. In addition, the state has no specific provisions addressing such services with regard to the tax. The Company's conference call services, therefore, are not subject to the Illinois Retailer's Occupation Tax.

Issue #3: Are the Company's sales of various optional features subject to the telecommunications tax imposed by 35 ILL. COMP. STAT. 630/I et. seq.?

Illinois defines 'telecommunications services' broadly for purposes of the telecommunications excise tax, including all services that are 'necessary for' or 'directly related to' providing telecommunications. See Ill. Gen. Inf. Ltr. 95-0304 (July 14, 1995). However, the entity in question in Ill. Gen. Inf. Ltr. 95-0304 considered itself to be a value-added reseller of telecommunications services while the Company in the instant matter is a consumer of such services. Thus, the contention that the features would be 'necessary for' or 'directly related' to the provision of telecommunications services does not apply to the Company. The Company, as discussed in Issue #1, is not a provider of telecommunications services, and the Company's sales of optional features should, therefore, not be subject to the Illinois telecommunications tax.

Issue #4: Are the Company's sales of various optional features subject to the Illinois Retailer's Occupation Tax imposed by 35 IL. COMP. STAT. 120/I et. seq.?

The Company's features that do not involve a transfer of tangible personal property are not subject to the Illinois Retailer's Occupation Tax. As stated above, services in general are exempt from tax. Several of the Company's features are 'pure' sales of services; i.e., the sales do not involve a transfer of property. Those features are the following: call notify, conference call no-show, promo tape, fax confirmation, digital tape, encore plus program, encore minutes, encore reporting, easy send and present on-line. As these services do not involve the transfer of property, they should not be subject to the Illinois Retailer's Occupation Tax. Additionally, delivery charges, such as the Company's charge for shipping audiotapes, are not taxable if separately agreed upon.

The Company's features involving a transfer of tangible personal property may also be considered exempt from the Illinois Retailer's Occupation Tax. As stated previously, the Illinois Retailer's Occupation Tax applies only to transfers of tangible personal property and not to sales of services. Sales of services that involve a transfer of property whose value is greater than 35% of the transaction, though, may be subject to the Illinois service occupation tax. In the case of the fax confirmation, fax complete, registration, taping, and diskette billing features, the property transferred by the Company to the customers is either tapes, disks, or participant lists. Provided the value of these materials is not 35% or more of the amount charged for the feature, the transfer of such

tangible personal property in conjunction with the feature service is not subject to the Illinois Retailer's Occupation Tax.

In addition, data processing is not a taxable service in Illinois. Data processing features such as the Company's encore plus program, encore minutes, and encore reporting, therefore, are not subject to the Illinois Retailer's Occupation Tax.

Summary

Applying relevant U.S. Supreme Court decisions, Illinois law and further precedent the Company's conference call services should not be subject to telecommunications tax in Illinois regardless of whether the call leader, and consequently the service address or location of the telecommunications equipment, is located in the state. The Company is a consumer and not a provider of telecommunications services and, as such, the Company's services do not fall within the scope of the Illinois telecommunications tax. Similarly, the Company's charges for optional features should not be subject to the telecommunications tax.

The Company's conference call services are not subject to the Illinois Retailer's Occupation Tax. The Company's feature charges are also exempt from the Retailer's Occupations Tax as sales of either pure services or of services involving transfers of property whose value does not incur the imposition of the service occupation tax. In the event some of those features do involve transfers of property whose value exceeds 35% of the transaction, the Company should be sure to separate its taxable feature charges from other charges.

The foregoing represents our interpretation of applicable law. However, in the event the Department intends to issue an adverse General Information Letter with respect to any of the issues addressed herein, we would appreciate the opportunity to discuss with Department personnel the positions we have set forth prior to the issuance of the letter.

Thank you in advance for your timely response. Please do not hesitate to call me at should you have any questions or require additional information.

The Telecommunications Excise Tax is imposed on the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. See generally, 86 Ill. Adm. Code Part 495.

Pursuant to the provisions of Section 2 of the Telecommunications Excise Tax Act ("Act"), "gross charge" means the amount paid for the act or privilege of originating or receiving telecommunications in this State and for all services and equipment provided in connection therewith by a retailer, valued in money, whether paid in money or otherwise, including cash, credits, services and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of materials used, labor or service costs or any other expense whatsoever." See, 35 ILCS 630/2(a) and Section 495.100 (a).

The *amount paid* means the amount charged to the taxpayer's service address in this State regardless of where such amount is billed or paid. See, 35 ILCS 630/2(b). "Service address" means

the location of telecommunications equipment from which the telecommunications services are originated or at which telecommunications services are received by a taxpayer. In the event this may not be a defined location, as in the case of mobile phones, paging systems, maritime systems, air-to-ground systems and the like, service address shall mean the location of a taxpayer's primary use of the telecommunications equipment as defined by telephone number, authorization code, or location in Illinois where bills are sent. See, 35 ILCS 630/2(n) and 86 Ill. Adm. Code 495.120.

Teleconferencing represents an especially difficult application of the term "service address." We have discovered that taxpayers are using three methods of calculating tax. The first is that some taxpayers calculate the Telecommunications Excise Tax based upon the location of the bridging equipment. The second is that some calculate the Telecommunications Excise Tax based upon the customer's billing address. The third is that some consider the teleconference provider to be a user of telecommunications and pay tax to their telecom suppliers.

The Streamlined Sales Tax Project is currently examining this question, and has developed two alternatives regarding the manner in which tax should be calculated. They are discussing calculation of Telecommunications Excise Tax based on the location of the equipment or based on a customer's billing address. The project has not yet recommended an option to the Implementing States and the Department does not know which option the Implementing States will finally adopt. For that reason, we suggest that you continue to calculate the tax as you have been. When the Implementing States adopt a recommendation from the Streamlined Sales Tax Project, the Department will promulgate a regulation and give it prospective application.

I hope that this information is helpful. The Department of Revenue maintains a website which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

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